S.B.Civil Second Appeal No.142/2007.

Paras Mal and another.

vs.

Municipal Board, Barmer.

Date : 7.5.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.S Srimali, for the appellants.

- - - - -

Heard learned counsel for the appellants/ plaintiffs.

The trial court granted decree for injunction by specifically mentioning that the question of title is not being decided by the trial court as the suit has been filed only for mere injunction.

According to learned counsel for the appellants, the trial court rightly observed that the plaintiffs' possession is legal possession and, therefore, they cannot be removed and that means that the Municipal Board, Barmer cannot remove the appellant without filing a suit for eviction. According to learned counsel for the appellants, the first appellate court

has modified the decree and granted injunction decree that the appellant shall not be dispossessed without following due process of law.

The appellants' apprehension is that they may be dispossessed from the property in question by summary proceedings which is not a due process of law.

Since the title has not been decided by the courts below and no decree for declaration has been passed, therefore, the plaintiffs cannot be declared owners of the property and in that situation, the only relief which could have been granted in favour of the plaintiffs was that the plaintiffs cannot be removed without following due process of law.

This is not a fit case where this is required to be determined what is the due process of law because that depends on facts of each case and in this case, when the decree is in favour of the plaintiffs, then whenever the plaintiffs are tried to remove from the suit property, they may take appropriate defence. In that view of the matter, the decree for injunction granted by the courts below appears to be just and proper.

In view of the above, I do not find any

substantial question of law involved in this appeal.

Consequently, this second appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya